

1 Honorable Christopher M. Alston
2 Chapter 11
3 Hearing Date: July 2, 2020
4 Hearing Time: 930 a.m.
5 Location: TELEPHONIC
6 **Response Date: At the hearing**

7 UNITED STATES BANKRUPTCY COURT
8 WESTERN DISTRICT OF WASHINGTON

9 In re
10 V S INVESTMENTS ASSOC LLC,
11
12 Debtor.

No. 20-11541-CMA

UNITED STATES TRUSTEE'S MOTION TO
CONVERT OR DISMISS CHAPTER 11 CASE

13 Acting United States Trustee for Region 18, Gregory M. Garvin ("U.S. Trustee"), hereby
14 moves the Court for an order converting or dismissing this chapter 11 case because of the failure
15 of VS Investment Assoc LLC (the "Debtor") to provide proof of adequate insurance on estate
16 assets (the "Motion"). In support of the Motion, the U.S. Trustee represents and alleges as
17 follows:

18 1. This Court has jurisdiction over the Motion pursuant to 11 U.S.C. §§ 307 and
19 1112(b).

20 2. The U.S. Trustee brings the Motion pursuant to the U.S. Trustee's authority to
21 supervise the administration of bankruptcy cases under 28 U.S.C. § 586(a)(3) and pursuant to 11
22 U.S.C. § 1112(b)(1). Because lack of insurance is the basis for relief, this Motion may be
23 brought on seven days' notice pursuant to Local Bankruptcy Rule 2015-1(d).

24 3. As stated in the Declaration of Young-Mi Petteys in Support of the Motion
25 ("Petteys Decl."), filed herewith:

26
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Office of the United States Trustee
700 Stewart Street
Suite 5103
Seattle, WA 98101-1271
206-553-2000, 206-553-2566 (fax)

1 a. The Debtor filed this chapter 11 case on May 29, 2020. (Pettey's Decl. ¶ 5.)

2 b. The Debtor timely provided some proof of insurance on June 5, 2020. (*Id.* at ¶ 6.)

3 c. On June 15, 2020, the Debtor filed the balance of its Schedules and its Statement of

4 Financial Affairs ("SOFA"). (*Id.* at ¶ 7.)

5 d. On June 17, 2020, the Debtor, through principals Viktoriya and Valentin Stelmakh,

6 and its counsel, Brad Puffpaff, participated in a telephonic initial debtor interview

7 with Young-Mi Petteys, Bankruptcy Analyst with the U.S. Trustee's Office. (*Id.* at

8 ¶ 8.) During the initial debtor interview, Ms. Petteys informed the Stelmakhs and

9 Mr. Puffpaff that, based on the Schedules, that the Debtor had not provided proof

10 of insurance covering its real property in Seattle. (*Id.*) The Debtor expressed that

11 it was actively trying to obtain insurance coverage. (*Id.*)

12 e. Following the initial debtor interview, Ms. Petteys sent Mr. Puffpaff an email

13 regarding the insurance requirement for the Seattle property, and requested that

14 proof of insurance be provided by Monday, June 22, 2020. (*Id.* at ¶ 9.)

15 f. Mr. Puffpaff stated in a responsive email to Ms. Petteys that the Debtor had found

16 insurance and was in the process of securing coverage. (*Id.* at ¶ 10.) However, as

17 of this filing, the U.S. Trustee's Office has not received proof of insurance

18 covering the Seattle property. (*Id.* at ¶ 11.)

19

20 4. Bankruptcy Code section 1112(b) provides that "absent unusual circumstances

21 specifically identified by the court that establish that the requested conversion or dismissal is not

22 in the best interests of creditors and the estate, the court shall convert a case under chapter 11 to

23 a case under chapter 7 or dismiss a case under chapter 11, whichever is in the best interests of

24 creditors and the estate, if the movant establishes cause." 11 U.S.C. § 1112(b)(1).¹ Section

25 1112(b) establishes a two-step analysis for addressing questions of conversion or dismissal.

26 First, the court must determine whether cause exists for conversion or dismissal. Second, the

27 court must "apply a 'balancing test' to choose between conversion or dismissal based upon the

28 'best interests of the creditors and the estate.'" *In re AVI, Inc.*, 389 B.R. 721, 729 (B.A.P. 9th

29 Cir. 2008), citing *In re Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006); see also *In re Owens*,

1 Although "cause" is not defined, § 1112(b)(4) contains a non-exclusive list of circumstances

2 constituting "cause" for purposes of section 1112(b). See 11 U.S.C. § 1112(b)(4); *In re Young*,

3 409 B.R. 508, 512 (Bankr. D. Idaho 2009).

1 552 F.3d 958, 960-61 (9th Cir. 2009) (court must consider interests of all creditors).
2

3 5. Cause exists pursuant to 11 U.S.C. § 1112(b) to convert or dismiss the chapter 11
4 case, whichever the Court determines to be in the best interest of creditors, because the Debtor
5 has not provided proof of adequate insurance, thereby potentially exposing the estate to
6 postpetition liability. 11 U.S.C. § 1112(b)(4)(C).

7 6. The U.S. Trustee is not aware of any “unusual circumstances” present that justify
8 not converting or dismissing the chapter 11 case.

9 7. The U.S. Trustees submits that dismissal may be in the best interests of creditors
10 because the current scheduled value of the Debtor’s real property is less than the scheduled value
11 of liens attached to such property. (Dkt. # 17, Schs. A/B and D.) The Debtor’s Schedule A/B
12 also includes “work in progress” on a construction project for ten townhomes, but the scheduled
13 value of \$4,050,000 is an estimate of what their value will be when construction of these homes
14 is completed. (Dkt. # 17, p. 4.)

15 Attached hereto are alternative proposed orders.
16

17 WHEREFORE, the U.S. Trustee respectfully requests that the Court enter its Order
18 converting this chapter 11 case to a case under chapter 7, or dismissing this chapter 11 case,
19 whichever the Court determines to be in the best interest of creditors.

20 DATED this 25th day of June, 2020.

21 Respectfully submitted,

22 GREGORY M. GARVIN
23 Acting United States Trustee for Region 18

24 /s/ Hilary Bramwell Mohr
25 Hilary Bramwell Mohr, WSBA #40005
26 Attorney for United States Trustee

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